

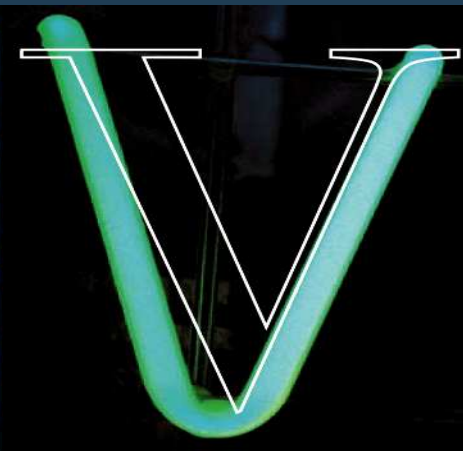
# VENABLE<sup>®</sup> LLP

## Nonprofit Chapters and Affiliates: Key Legal Issues, Pitfalls and Successful Strategies

Thursday, July 12, 2012  
12:30 p.m. - 2:00 p.m. EDT  
Venable LLP  
Nonprofit Organizations Practice  
Washington, DC

Moderator:  
Jeffrey S. Tenenbaum, Esq.

Panelists:  
George E. Constantine, III, Esq.  
Janice M. Ryan, Esq.

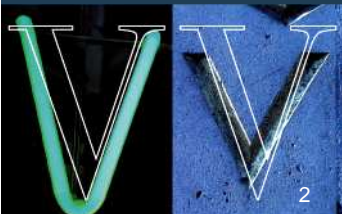


© 2012 Venable LLP

## Upcoming Venable Nonprofit Legal Events

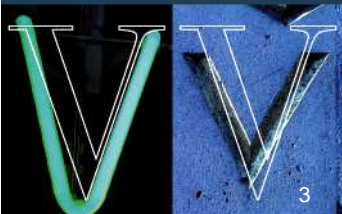
August 2, 2012 - [How Nonprofits Can Raise Money and Awareness through Promotional Campaigns without Raising Legal Risk](#)

September 13, 2012 – Details Coming Soon



## Today's Discussion

- Common affiliation structures
- Key legal pitfalls
  - Attribution of liability to affiliated entities
  - Intellectual property ownership and use
  - Antitrust considerations
  - Governance-related challenges
- Special tax considerations
  - Group tax exemption
  - 501(c)(3) affiliates of non-501(c)(3) entities (e.g., association foundations)
- Managing affiliate relationships
  - Affiliation agreements, and other successful strategies



# Common Affiliation Structures

## Reasons to Affiliate

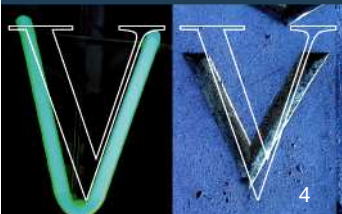
Tax  
Restrictions

Fundraising  
Opportunities

Maximizing  
Resources

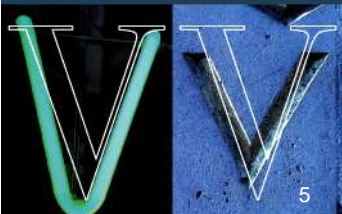
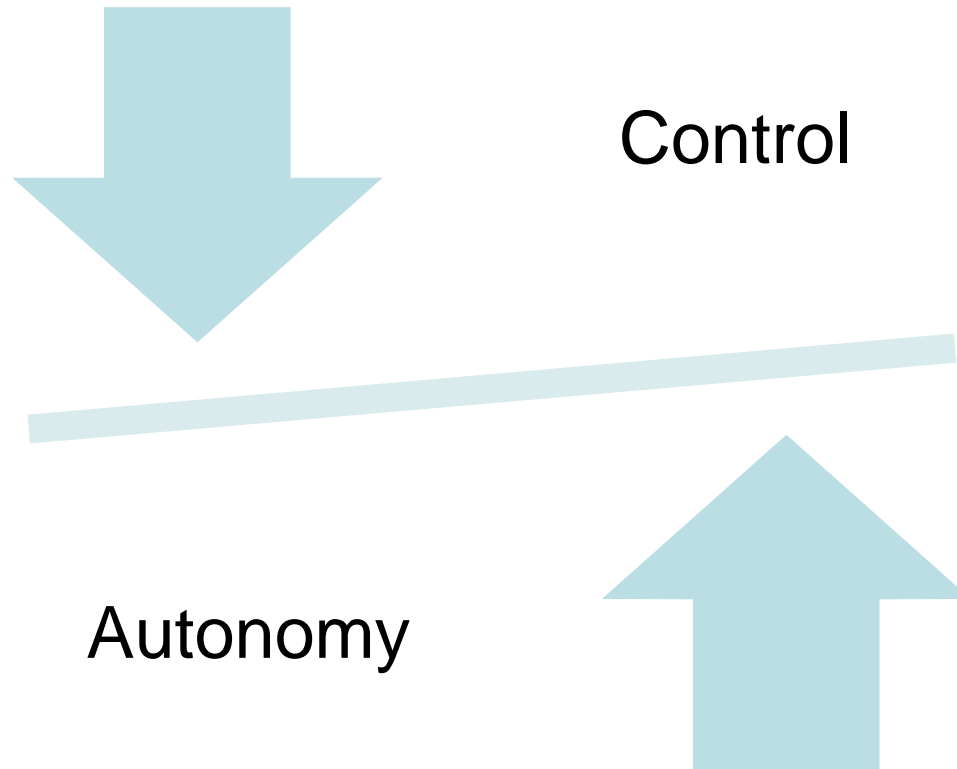
Geographic  
Focus

Managing  
Liability  
Exposure



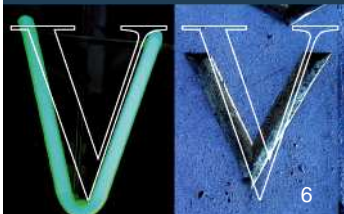
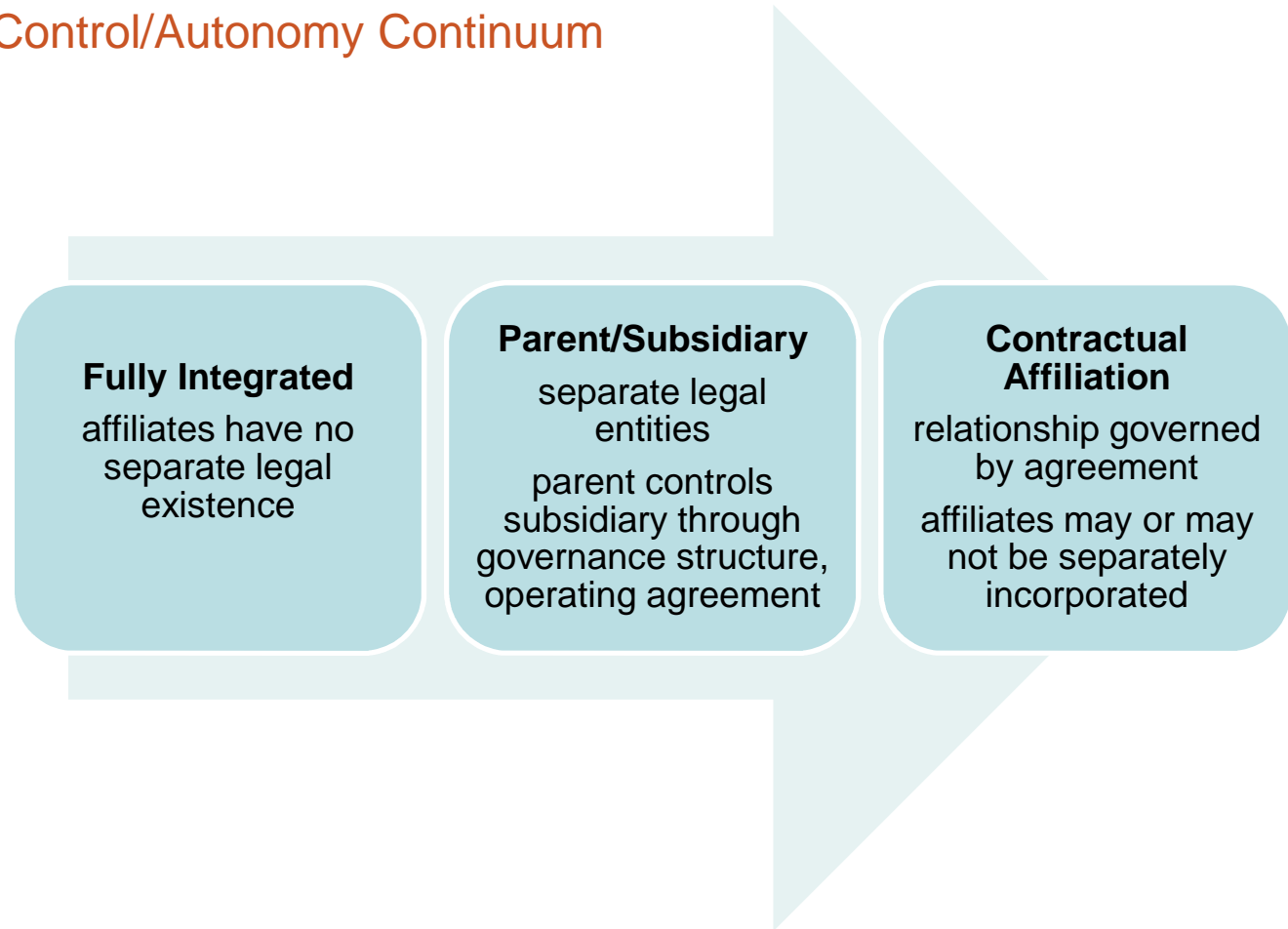
# Common Affiliation Structures

Control v. Autonomy is Key Factor in Choice of Structure



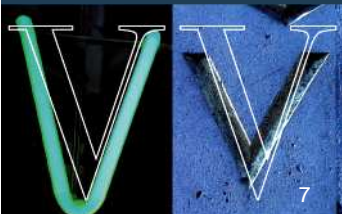
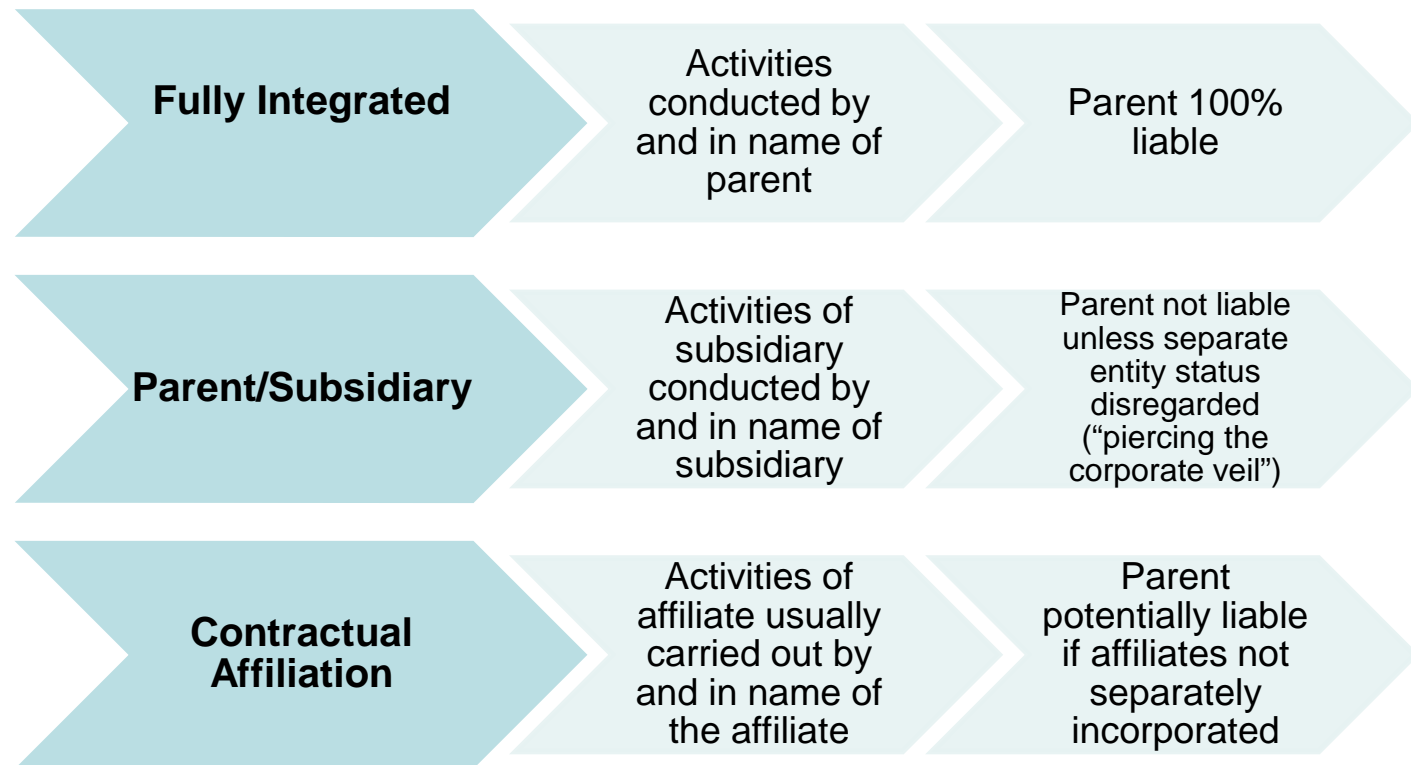
# Common Affiliation Structures

## Control/Autonomy Continuum



# Common Affiliation Structures

## Risk Profile of Common Affiliation Structures



# Common Affiliation Structures

## Other Characteristics

### Fully Integrated

- Common for entities with affiliates dedicated to specific subject-matter interests; also sometimes used by entities with geographic-based affiliates
- Full integration minimizes administrative burden of maintaining separate legal entities

### Parent/Subsidiary

- Common for association-related foundation relationships or other closely-affiliated relationships
- Maximizes control while minimizing liabilities

### Contractual Affiliation

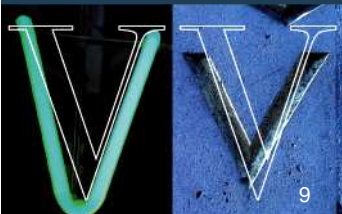
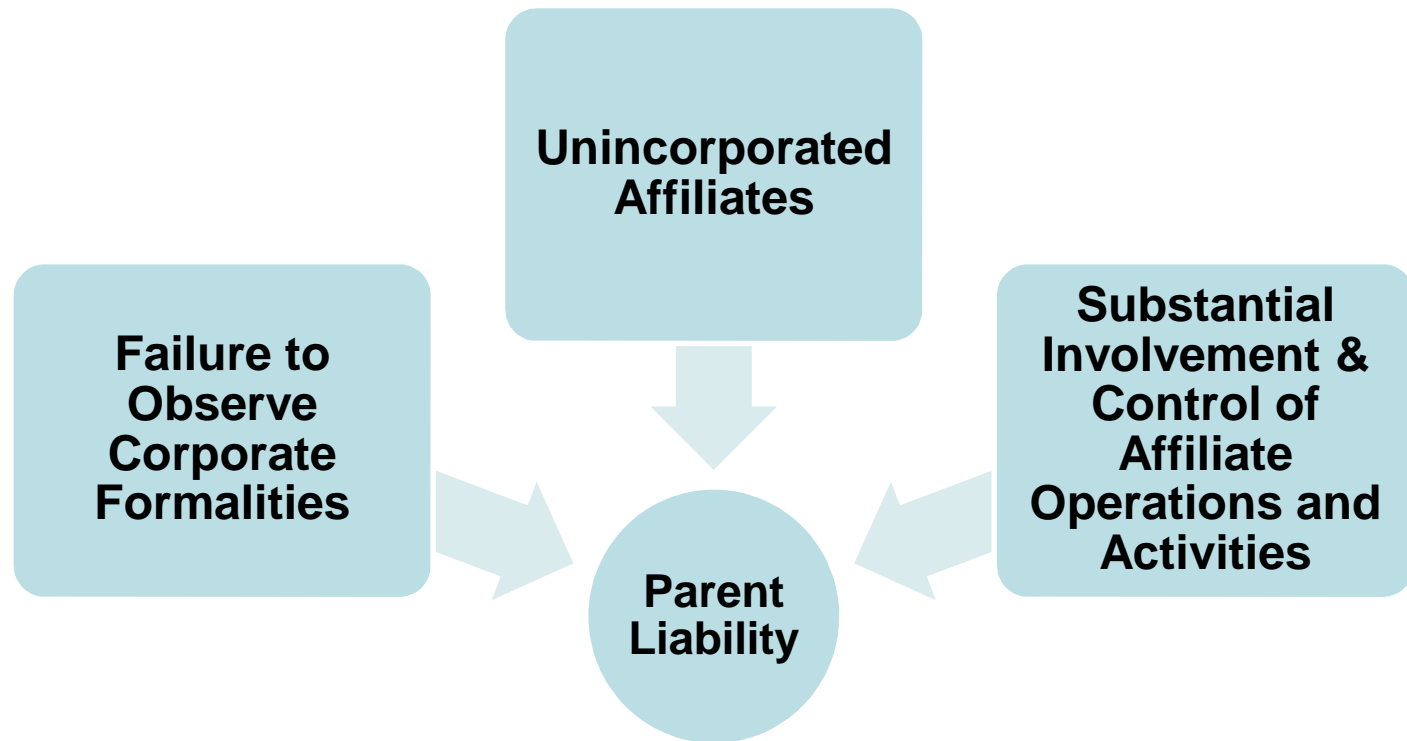
- Common for “federation” model of related national, regional, state, or local associations
- Degree of integration or autonomy varies to suit organizations’ needs and preferences
- But beware unincorporated affiliates and/or absence of affiliation agreement





# Key Legal Pitfalls

Attribution of Liability to Parent (Tort, Contract, etc.)



# Key Legal Pitfalls

## Intellectual Property Ownership and Use

### Names & Logos

- Common practice for affiliate name to include parent's name
- Disputes over use of name likely in the event of disaffiliation
- Specify trademark license terms in affiliation agreement and/or bylaws or policies
- Consider trademark registration (U.S. and foreign, if operating internationally)

### Publications & Data

- Address ownership and licensing of membership lists, data, and works created by or through affiliates in affiliation agreement or on a project-by-project basis as necessary
- Consider 501(c)(3) tax implications before assigning rights to a non-501(c)(3)



# Key Legal Pitfalls

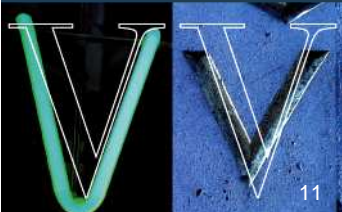
## Antitrust Considerations

Price Restrictions

Territorial  
Restrictions

Common  
Membership  
Requirements

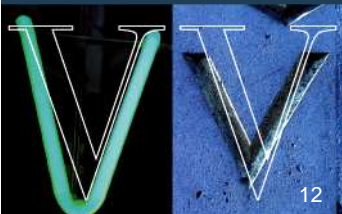
Facilitating or  
Participating in  
Anticompetitive  
Activities of Affiliate



# Key Legal Pitfalls

## Governance-related Challenges

- Fiduciary duties
  - Overlapping directors on parent and affiliate boards
  - Affiliate representatives on parent board
- Common governance structure requirements
  - What works for parent might not be best for affiliate
- Common membership requirements
  - Qualifications
  - Termination
- Managing Affiliate Status
  - Threshold for granting charter
  - Dispute resolution
  - Inactive or probation status
  - Disaffiliation
- Financial management
  - Dues collection arrangements
  - Internal controls at affiliate level



# Special Tax Considerations

## Federal Group Tax Exemption

### Application Process

Increasingly Lengthy  
& Expensive Process

Changes May Be  
Forthcoming

### Benefits & Limitations

Substantial Benefit  
for Subordinates

“General Supervision  
or Control” Element &  
Liability Risk

UBIT  
Federal Employment  
Taxes  
State & Local Taxes

### Compliance

Annual Filings &  
Automatic  
Revocation

Monitoring  
Subordinate Activities

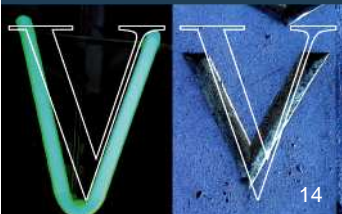
Training



# Special Tax Considerations

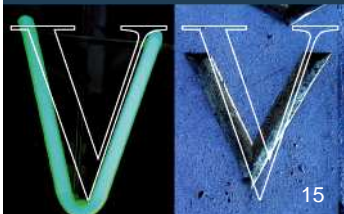
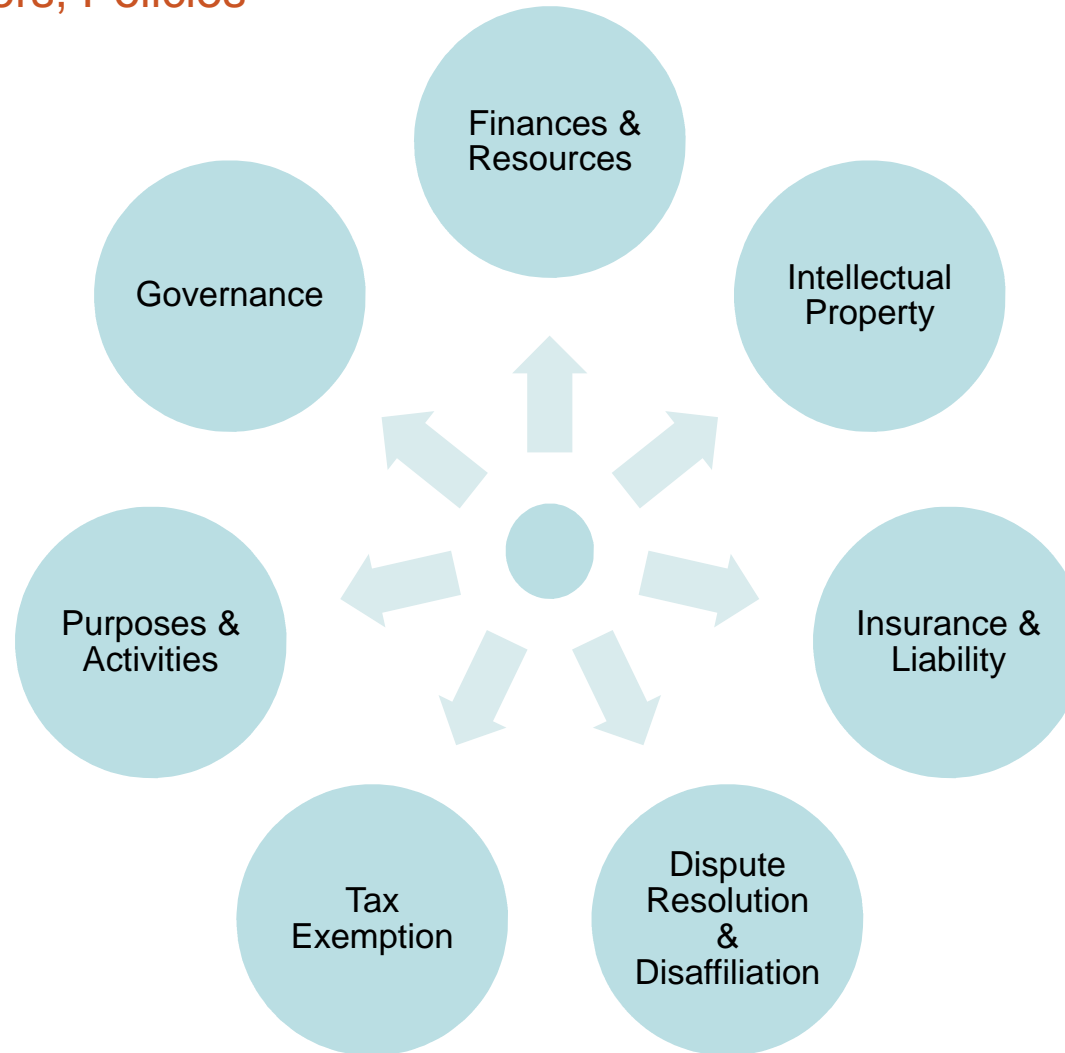
## 501(c)(3) Affiliates of Non-(c)(3) Entities

- Private benefit and private inurement
- Transferring funds and other resources from (c)(3) to non-(c)(3)
  - Grants to non-(c)(3)s
  - Providing fair market value consideration
- Attribution of political and lobbying activities to (c)(3)
  - Shared websites



# Managing Affiliate Relationships

Key Elements for Agreements, Articles & Bylaws, Affiliate Charters, Policies



# Managing Affiliate Relationships

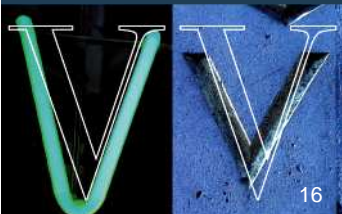
## Key Elements for Agreements, Articles & Bylaws, Affiliate Charters, Policies

### Governance

- Parent entity control mechanisms
- Requirements for governance structure, nominations & elections, etc.
- Common membership requirements

### Finances & Resources

- Cost allocation for shared staff, facilities, and other resources
- Allocation of revenues, fundraising requirements
- Dues collection arrangements
- Internal controls requirements
- Annual reports for group exemption purposes





# Managing Affiliate Relationships

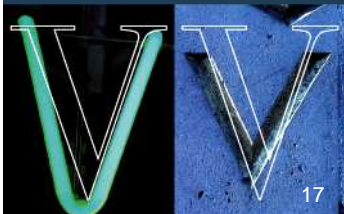
## Key Elements for Agreements, Articles & Bylaws, Affiliate Charters, Policies

### Purposes & Activities

- Common (or at least not inconsistent) mission and purposes
- Expectations and parameters for affiliate activities; geographic territory (but note franchise issue)
- Support and other services, if any, to be provided by parent to affiliate

### Tax Exemption

- Expectation for affiliates to maintain tax-exempt status (group exemption or otherwise)
- Reasonable cost allocation for shared staff and facilities to avoid adverse tax consequences (UBIT, private benefit, private inurement)



# Managing Affiliate Relationships

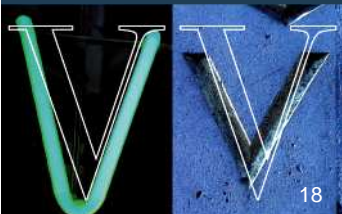
## Key Elements for Agreements, Articles & Bylaws, Affiliate Charters, Policies

### Intellectual Property

- Ownership and license terms applicable to use of names, logos, and other trade or service marks
- Ownership and license terms applicable to use of membership lists and other copyrighted or proprietary data or materials

### Liability & Insurance

- Confidentiality
- Limitations on authority to speak or act on behalf of affiliated entity
- Indemnification
- Insurance expectations

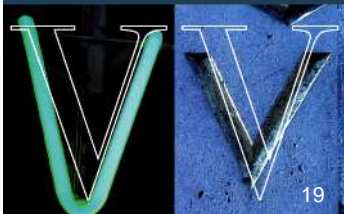


# Managing Affiliate Relationships

Key Elements for Agreements, Articles & Bylaws, Affiliate Charters, Policies

Dispute  
Resolution  
&  
Disaffiliation

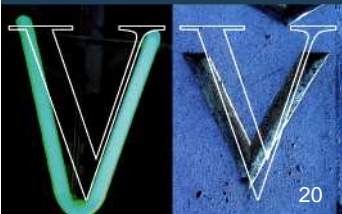
- Establish clear procedures and authorities governing dispute resolution, including and up to probation or disaffiliation
- Consider leverage of respective parties
- At minimum, address parent's right to terminate license of name, logo, and other trade or service marks



# Managing Affiliate Relationships

## Other Successful Strategies

- Invest in dedicated affiliate or chapter relations staff
- Provide affiliate leaders with resources and training on fundamentals of nonprofit governance and tax-exempt status requirements
- Include affiliate leaders in decision-making where appropriate
- Insurance



## Questions and Discussion

Venable LLP

575 7<sup>th</sup> Street, NW

Washington, DC 20004

202.344.4000

Jeffrey S. Tenenbaum, Esq.

[jstenenbaum@Venable.com](mailto:jstenenbaum@Venable.com)

t 202.344.8138

George E. Constantine, III, Esq.

[geconstantine@Venable.com](mailto:geconstantine@Venable.com)

t 202.344.4790

Janice M. Ryan

[jmryan@Venable.com](mailto:jmryan@Venable.com)

t 202.344.4093

To view Venable's index of articles, PowerPoint presentations, recordings, and upcoming seminars on nonprofit legal topics, see [www.Venable.com/nonprofits/publications](http://www.Venable.com/nonprofits/publications), [www.Venable.com/nonprofits/recordings](http://www.Venable.com/nonprofits/recordings), [www.Venable.com/nonprofits/events](http://www.Venable.com/nonprofits/events).

